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13 Board As Liquidating Agent For Western Corporate Federal Credit Union

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 NATIONAL CREDIT UNION
18 ADMINISTRATION BOARD AS
19 LIQUIDATING AGENT FOR
20 WESTERN CORPORATE FEDERAL
21 CREDIT UNION,

22 Plaintiff,

23 v.

24 ROBERT A. SIRAVO, TODD M. LANE,
25 ROBERT J. BURRELL, THOMAS E.
26 SWEDBERG, TIMOTHY T. SIDLEY,
27 ROBERT H. HARVEY, JR., WILLIAM
28 CHENEY, GORDON DAMES, JAMES
P. JORDAN, TIMOTHY KRAMER,
ROBIN J. LENTZ, JOHN M. MERLO,
WARREN NAKAMURA, BRIAN
OSBERG, DAVID RHAMY and
SHARON UPDIKE,

Defendants. _____

Case No.: CV10-01597 GW (MANx)
**PROTECTIVE ORDER ENTERED
PURSUANT TO THE PARTIES'
STIPULATION
[DISCOVERY MATTER]**

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1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on
2 the parties' Stipulation Re Entry of Protective Order Governing Use and
3 Dissemination of Confidential Information ("Stipulation") filed on November 23,
4 2011, the terms of the protective order to which plaintiff and counterdefendant the
5 National Credit Union Administration Board as Liquidating Agent for Western
6 Corporate Federal Credit Union (the "NCUA") and defendants and counterclaimants
7 Robert A. Siravo, Thomas E. Swedberg, Timothy T. Sidley, Robert J. Burrell, and
8 Todd M. Lane (collectively, the "Officer Defendants") have agreed are adopted as a
9 protective order of this Court (which generally shall govern the pretrial phase of this
10 action) except to the extent, as set forth below, that those terms have been
11 substantively modified by the Court's amendment of paragraph 14 of the [Proposed]
12 Order Governing Use and Dissemination of Confidential Information filed
13 concurrently with the Stipulation.

14 The parties are expressly cautioned that the designation of any information,
15 document, or thing as "Confidential Discovery Material," "confidential," or other
16 designation(s) used by the parties, does not, in and of itself, create any entitlement to
17 file such information, document, or thing, in whole or in part, under seal.
18 Accordingly, reference to this Protective Order or to the parties' designation of any
19 information, document, or thing as "Confidential Discovery Material,"
20 "confidential," or other designation(s) used by the parties, is wholly insufficient to
21 warrant a filing under seal.

22 There is a strong presumption that the public has a right of access to judicial
23 proceedings and records in civil cases. In connection with non-dispositive motions,
24 good cause must be shown to support a filing under seal. The parties' mere
25 designation of any information, document, or thing as "Confidential Discovery
26 Material," "confidential," or other designation(s) used by parties, does not --
27 **without the submission of competent evidence, in the form of a declaration or**
28 **declarations, establishing that the material sought to be filed under seal**

1 **qualifies as confidential, privileged, or otherwise protectable** -- constitute good
2 cause.

3 Further, if sealing is requested in connection with a dispositive motion or
4 trial, then compelling reasons, as opposed to good cause, for the sealing must be
5 shown, and the relief sought shall be narrowly tailored to serve the specific interest
6 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th
7 Cir. 2010). For each item or type of information, document, or thing sought to be
8 filed or introduced under seal in connection with a dispositive motion or trial, the
9 party seeking protection must articulate compelling reasons, supported by specific
10 facts and legal justification, for the requested sealing order. **Again, competent**
11 **evidence supporting the application to file documents under seal must be**
12 **provided by declaration.**

13 Any document that is not confidential, privileged, or otherwise protectable in
14 its entirety will not be filed under seal if the confidential portions can be redacted.
15 If documents can be redacted, then a redacted version for public viewing, omitting
16 only the confidential, privileged, or otherwise protectable portions of the document,
17 shall be filed. Any application that seeks to file documents under seal in their
18 entirety should include an explanation of why redaction is not feasible.
19 Notwithstanding any other provision of this Protective Order, in the event that this
20 case proceeds to trial, all information, documents, and things discussed or
21 introduced into evidence at trial will become public and available to all members of
22 the public, including the press, unless sufficient cause is shown in advance of trial to
23 proceed otherwise.

24 25 **TERMS OF PROTECTIVE ORDER**

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27 1. This Order shall govern the disclosure and handling of all documents
28 and other products of discovery obtained by the parties in this case (the "Action"),

1 all information derived therefrom, and all copies, excerpts, or summaries thereof,
2 including, but not limited to, documents produced pursuant to inspection demands
3 or subpoenas, answers to requests for admission, answers to interrogatories, and
4 deposition transcripts (hereinafter referred to collectively as “Discovery Materials”).

5 2. Discovery Materials shall be entitled to treatment as Confidential
6 Discovery Materials if they contain confidential material including, but not limited
7 to: (a) current financial information of a party; (b) information pertaining to a third
8 party as to which the third party has interests in confidentiality or privacy; or (c)
9 trade secrets as defined in Cal. Civ. Code § 3426.1 (which provides that the term
10 “trade secret” “means information, including a formula, pattern, compilation,
11 program, device, method, technique, or process, that: (1) Derives independent
12 economic value, actual or potential, from not being generally known to the public or
13 to other persons who can obtain economic value from its disclosure or use; and
14 (2) Is the subject of efforts that are reasonable under the circumstances to maintain
15 its secrecy”).

16 3. A party producing Discovery Materials containing information as to
17 which a third party has interests in confidentiality or privacy (“Third Party
18 Confidential Discovery Materials”) may produce such Third Party Confidential
19 Discovery Materials without designating those Discovery Materials as confidential
20 or redacting information from those Discovery Materials. No party shall file,
21 disclose (other than in response to discovery served in this matter), or otherwise use
22 any Third Party Confidential Discovery Materials obtained from another party
23 without redacting or excluding personal identifiers in the manner provided for by
24 Rule 79-5.4 of the Local Rules of the United States District Court for the Central
25 District of California .

26 4. A party or third party producing Discovery Materials as to which such
27 party itself has interests in confidentiality or privacy (“First Party Confidential
28

1 Discovery Materials”) shall designate such Discovery Materials as confidential
2 pursuant to the provisions set forth herein.

3 5. A party may designate First Party Confidential Discovery Materials as
4 Confidential Discovery Materials (by stamping them “CONFIDENTIAL”) only if
5 they contain confidential information.

6 6. Designation of First Party Confidential Discovery Materials pursuant to
7 this Order shall be made at the time the information is produced or filed, or in the
8 case of a deposition transcript, within 15 days after receipt thereof, by stamping
9 “CONFIDENTIAL” on each page of such First Party Confidential Discovery
10 Materials and by notifying the parties hereto of such designation.

11 7. If any portion of a written discovery response contains Confidential
12 Discovery Materials (whether First Party Confidential Discovery Materials or Third
13 Party Confidential Discovery Materials), such portion shall be provided in a separate
14 document, appended to the main body of the response, appropriately marked in
15 accordance with paragraph 5 above, and incorporated by reference therein.

16 9. Testimony taken at a deposition that contains Confidential Discovery
17 Materials (whether First Party Confidential Discovery Materials or Third Party
18 Confidential Discovery Materials) may be designated as confidential by making a
19 statement to that effect on the record at the deposition. Arrangements shall be made
20 with the court reporter taking and transcribing such deposition to separately bind
21 such portions of the transcript containing information designated as confidential,
22 and to label such portions appropriately. Alternatively, a party may designate such
23 testimony as confidential within 15 days after receiving the transcript of such
24 testimony.

25 10. Discovery Materials produced pursuant to this Order and containing
26 confidential information (whether First Party Confidential Discovery Materials or
27 Third Party Confidential Discovery Materials and whether or not designated as
28

1 Confidential Discovery Materials) shall not be given, shown, made available,
2 discussed, or otherwise communicated in any way to anyone other than:

3 (A) the attorneys of record for any party to the Action or
4 outside counsel assisting such attorneys of record or party to the
5 Action, and the employees and agents of such attorneys to whom, in the
6 opinion of the attorneys in charge of the case for such party, it is
7 necessary to the preparation of their case that such Discovery Materials
8 be shown;

9 (B) any individual who is a party to the Action and inside
10 counsel, directors, officers and employees of any party who are
11 assisting in the preparation of the Action for litigation and to whom, in
12 the opinion of the attorneys in charge of the case for such party, it is
13 necessary to the preparation of their case that such Discovery Materials
14 be shown;

15 (C) independent experts or consultants (collectively referred to
16 as "Experts or Consultants") retained by the attorneys of record for any
17 party to assist in the preparation of the Action for litigation, and the
18 office personnel of any Experts or Consultants who have received such
19 Discovery Materials;

20 (D) any employee or agent of a copying service or similar
21 entity to whom the Discovery Materials are provided for the purpose of
22 making copies;

23 (E) any person designated on the face of the Discovery
24 Materials as a preparer or prior recipient thereof;

25 (F) any person who has been indicated by the party producing
26 such Discovery Materials to have been a prior recipient thereof;

27 (G) the Court and its employees;

28 (H) court reporters;

1 (I) a non-party witness during the course of his or her
2 deposition or trial testimony; and

3 (J) such other persons, and on such other terms and
4 conditions, as the parties agree to in writing or as the Court, upon
5 application, may order.

6 11. Each person referred to in paragraph 10 above shall be informed of the
7 general contents of this Order and such persons (with the exception of those referred
8 to in paragraphs 10(A), 10(D), 10(G), and 10(H) above) shall agree to be bound by
9 the terms of this Order prior to viewing or discussion of any Discovery Materials
10 containing confidential information (whether First Party Confidential Discovery
11 Materials or Third Party Confidential Discovery Materials and whether or not
12 designated as Confidential Discovery Materials).

13 12. A party seeking to file or lodge with the Court any transcripts of
14 depositions or portions thereof, exhibits, answers to interrogatories, responses to
15 requests for admission, and other documents which contain confidential information
16 (whether First Party Confidential Discovery Materials or Third Party Confidential
17 Discovery Materials and whether or not designated as Confidential Discovery
18 Materials), or any pleading or memorandum or other document purporting to
19 reproduce or paraphrase such information, shall comply with the procedures set
20 forth in Rule 79-5 of the Local Rules of the United States District Court for the
21 Central District of California and the version of the Court's Standing Order posted
22 on the Central District's website as of the time of such filing or lodging for
23 obtaining approval to file such materials under seal.

24 13. This Order is without prejudice to the right of any party or third party
25 to consent, subject to any limitations it may impose, to disclosure of its Confidential
26 Discovery Materials to any other person.

27 14. When Discovery Materials containing confidential information
28 (whether First Party Confidential Discovery Materials or Third Party Confidential

1 Discovery Materials and whether or not designated as Confidential Discovery
2 Materials) will likely be presented, quoted, or referred to in any deposition or
3 proceeding other than trial, the party or third-party witness claiming confidentiality
4 shall have the right to make arrangements to insure that only the persons who, in
5 accordance with paragraph 10 herein would be permitted access to said confidential
6 information are present during said presentation, quotation, or reference. When
7 Confidential Discovery Materials (whether First Party Confidential Discovery
8 Materials or Third Party Confidential Discovery Materials and whether or not
9 designated as Confidential Discovery Materials) are incorporated in a transcript of a
10 deposition or proceeding other than trial, any party or third-party witness claiming
11 confidentiality shall arrange with the court reporter to bind the confidential portions
12 of such transcript separately and to label such portion of the transcript as
13 “CONFIDENTIAL” and any copies thereof shall be held in confidence as provided
14 in this Order. The use at trial of Confidential Discovery Materials (whether First
15 Party Confidential Discovery Materials or Third Party Confidential Discovery
16 Materials and whether or not designated as Confidential Discovery Materials) shall
17 be governed by the standards and procedures set forth in the version of the Court’s
18 Standing Order posted on the Central District’s website as of the time of such use
19 **and by further order, upon appropriate motion, application, or request of a**
20 **party, of the District Judge who will try the case.**

21 15. This Order pertains only to material obtained in connection with this
22 Action and does not limit the use or disclosure of material that has been obtained by
23 any party from any other source including, without limitation, material that: (A) is,
24 or becomes, public knowledge due to circumstances that do not include a violation
25 of the terms of this Order; (B) is acquired by the nondesignating party from a third
26 party which lawfully possesses such material and which may lawfully disclose such
27 material; or (C) was lawfully possessed by the nondesignating party prior to
28 commencement of this litigation.

1 16. Any objections to a party's or third-party witness' designation during
2 discovery of Discovery Materials as Confidential Discovery Materials shall be
3 addressed as follows:

4 (A) The receiving party may at any time object to the
5 designation of Discovery Materials as Confidential Discovery
6 Materials. Should the parties be unable informally to resolve such
7 objection(s), then the receiving party shall make a motion on notice to
8 all parties to this Action and any applicable third-party witnesses.

9 (B) The party claiming confidentiality shall have the burden of
10 demonstrating that the confidential designation was proper under the
11 terms of this Order.

12 (C) Any Discovery Materials that have been designated
13 confidential shall be treated as confidential until such time as the Court
14 orders that such materials should not be treated as confidential.

15 17. Upon final termination of this Action, including any appeals, whether
16 by settlement or otherwise, upon written request a party to whom Discovery
17 Materials that might contain confidential information were produced shall destroy
18 them. In addition, upon written request all copies and/or summaries (including
19 computer databases) that might contain any said confidential information shall be
20 destroyed. This paragraph shall not preclude outside counsel from maintaining a
21 file copy of any pleading, deposition transcript, correspondence, or attorney working
22 papers that contains, attaches, refers to, or discusses said Confidential Discovery
23 Materials.

24 18. This Order shall be without prejudice to the right of the parties: (A) to
25 redact portions of Discovery Materials that are (i) privileged or (ii) not relevant to
26 the subject matter of the Action and not reasonably calculated to lead to the
27 discovery of admissible evidence, provided that such redactions are clearly
28 identified on the Discovery Materials as redactions; (B) to bring before the Court at

1 any time the question of whether any particular document or information is
2 confidential or whether its use should be restricted; or (C) to present a motion to the
3 Court for a separate protective order as to any particular document or information,
4 including restrictions differing from those as specified herein. This Order shall not
5 be deemed to prejudice the parties in any way in any future application for
6 modification of this Order.

7 19. Before the failure of Western Corporate Federal Credit Union
8 (“WesCorp”), the Officer Defendants had access to various WesCorp documents
9 that constitute attorney-client communications. As WesCorp’s liquidating agent, the
10 NCUA now has possession of WesCorp’s documents, including documents that
11 constitute attorney-client communications and/or attorney work product. The other
12 parties may also have possession of such documents. The parties shall not assert the
13 attorney-client privilege nor the work product doctrine as a ground for resisting
14 production to each other of pre-failure documents protected by WesCorp’s attorney-
15 client privilege and/or attorney work product that were in the possession, custody, or
16 control of WesCorp or of any of the parties as of the time of WesCorp’s failure. The
17 parties’ production of Discovery Materials that were subject to claims by WesCorp
18 of the attorney-client privilege and/or the work product doctrine (“WesCorp
19 Privileged Documents”) shall not constitute a waiver of any privilege, including any
20 attorney-client privilege and/or work product doctrine with regard to any person or
21 entity who is not a party to this lawsuit. The NCUA shall have the sole right to
22 waive the attorney-client privilege and/or the work product doctrine with regard to
23 WesCorp Privileged Documents.

24 20. Nothing in this Order shall be construed to affect either the
25 discoverability or admissibility at trial of any document or thing, nor shall any
26 party’s or third-party witness’ assent to this Order be deemed to waive that party’s
27 right to object to the production of documents and things on appropriate grounds, to
28 move to compel the production of documents and things wrongfully withheld from

1 production, to assert appropriate privileges and immunities in response to discovery
2 requests, or to seek additional protection or other modification of this Order by
3 subsequent order of the Court. No party may refer to this Order or the designation
4 of any document as proof that the designated Discovery Materials are actually
5 confidential.

6 21. This Order shall apply retroactively to the date the instant Action was
7 filed. All Discovery Materials produced during the course of the Action prior to the
8 execution of this Order that contain confidential information (whether First Party
9 Confidential Discovery Materials or Third Party Confidential Discovery Materials
10 and whether or not designated as Confidential Discovery Materials) or WesCorp
11 Privileged Documents, shall be subject to the terms and conditions of this Order.

12 22. This Order shall remain in force and effect and shall not be modified,
13 superseded, or terminated except by express written consent of the parties, or by
14 order of the Court.

15 23. Upon conclusion of this Action, this Court shall retain such jurisdiction
16 regarding this Order for purposes of enforcing its terms and conditions and to enable
17 any party herein to apply for such other and further orders concerning the subject of
18 this Order as may be necessary or appropriate.

19 24. If anyone violates or threatens to violate any term of this Order, any
20 party or third-party witness may seek damages and injunctive relief, and it shall not
21 be a defense thereto that the party or third party witness seeking such relief
22 possesses an adequate remedy at law.

23 **IT IS SO ORDERED.**

24
25 Dated: February 3, 2012

26 *Margaret A. Nagle*
27

Margaret A. Nagle
28 United States Magistrate Judge